GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:3916
ANSWERED ON:19.12.2006
ANTI DUMPING LAW
Badiga Shri Ramakrishna

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether Supreme Court of India has recently opined on the anti-dumping law of the country; and

(b) if so, the details thereof and the action taken by the Government in this regard?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY(SHRI JAIRAM RAMESH)

(a): Yes, Sir .

(b): Extracts of the opinion of the Hon`ble Supreme Court, as contained in the judgment dated the 11th September, 2006 in Civil Appeal No. 1294 of 2001 (Reliance Industries Ltd. -Versus-Designated Authority & Ors.) on the anti -dumping law of the country are given below:-

1.`In our opinion, both normal value and NIP are not exporter or domestic industry specific respectively but exporting country specific and importing country specific (India). Once dumping of specific goods from a country is established, dumping duty can be imposed on all exports of those goods from that country to India under Section 9A, irrespective of the exporter. The rate of duty may vary from exporter to exporter depending upon the export price. Similarly, as regards the matter of NIP, it is the reasonable price which the subject goods can be produced by the domestic industry as a whole that is relevant.`

2.`The provisions relating to injury analysis in Annexure II to the Anti-dumping Rules are also clear that the injury determination is always for the domestic industry as a whole and not for individual companies.`

3.`In our opinion, since NIP is for the industry as a whole, it is immaterial if a particular company produces some of its inputs captively. In our opinion, for the purpose of determination of NIP, the DA is always required to take into consideration the transfer price (market value) of the inputs and not their actual cost of captive production.`

4. `In our opinion, there is no basis to adopt the best capacity utilization achieved in the past period as the industry is generally bound to achieve higher capacity utilization if it is not affected by injurious dumping. The apportionment of fixed costs has to be necessarily done on the basis of actual production during the period of investigation and not an assumed level of capacity utilization to avoid all arbitrariness.`

5.`We do not agree with the Tribunal that the notification of the Central Government under Section 9A is a legislative act. In our opinion, it is clearly quasi judicial.The proceedings before the DA is to determine the lis between the domestic industry on the one hand and the importer of foreign goods from the foreign supplier on the other. The determination of the recommendation of the DA and the Government notification on its basis is subject to an appeal before the CESTAT. This also makes it clear that the proceedings before the DA are quasi judicial.` 6.`In our opinion, Rule 7 does not contemplate any right in the DA to claim confidentiality. Rule 7 specifically provides that the right of confidentiality is restricted to the party who has supplied the information, and that party has also to satisfy the DA that the matter is really confidential. Nowhere in the rule has it been provided that the DA has the right to claim confidentiality, particularly regarding information which pertains to the party which has supplied the same.`

7`In our opinion, excessive and unwarranted claim of confidentiality defeats the right to appeal. In the absence of knowledge of the consequences, grounds, reasoning and methodology by which the DA has arrived at its decision and made its recommendation, the parties to the proceedings cannot effectively exercise their right to appeal either before the Tribunal or this Court.`

The Government has filed a review petition (Civil) No. 1297 of 2006 in the Hon`ble Supreme Court.